

Chapter 3

ALCOHOLIC BEVERAGES*

Art. I. In General, §§ 3-1—3-15
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ARTICLE I. IN GENERAL

Sec. 3-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Alcoholic beverage* means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.
- (2) *License* means any license issued pursuant to the T.A.B.C., except a temporary or agent's beer license.
- (3) *Licensee* means a person who is the holder of a license, as herein defined, or any agent, servant, or employee of that person.
- (4) *Permit* means any permit issued pursuant to the T.A.B.C., except any of the following:
 - a. Agent's, airline beverage, industrial, carrier's, private carriers, private club registration, local cartage, storage, and temporary wine and beer retailer's permits.
 - b. A wine and beer retailer's permit issued for a dining, buffet, or club car.
 - c. A mixed beverage permit during the three-year period following the issuance of the permit.

(5) *Permittee* means a person who is the holder of a permit, as herein defined, or an agent, servant, or employee of that person.

(6) *Premises* means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

(7) *T.A.B.C.* means the Texas Alcoholic Beverage Code, as amended.
(Code 1968, § 4-1; Ord. No. 81-1237, § 1, 6-30-81)

Sec. 3-2. Location of dealer's premises near church, school or hospital.

(a) It shall be unlawful for any dealer to sell alcoholic beverages within the corporate limits of the city where the place of business of such dealer is within 300 feet of any church, public elementary, junior high or high school, or public hospital or within 300 feet of a "private school" as that term is defined in Section 109.33 of the Texas Alcoholic Beverage Code. It shall be unlawful for any dealer to sell alcoholic beverages in any area designated by the city council, as provided in subsection (e) below, as an "alcohol-free school zone." The measurement of the distance between the place of business where alcoholic beverages are sold and the church, public hospital, public school, or private school shall be made as provided in Section 109.33 of the Texas Alcoholic Beverage Code. This section shall be administered in a manner that is consistent with Section 109.33 of the Texas Alcoholic Beverage Code and shall not apply to any alcoholic beverage license or permit to which that section is inapplicable.

(b) The provisions of subsection (a) of this section shall not apply to any place of business actually operated by a dealer on April 24, 1940,

***Charter reference**—Authority to regulate dram shops, drinking saloons, etc., Art. II, § 16j(c).

Cross references—Food and drug, Ch. 20; health, Ch. 21; fee for certificates issued pursuant to Alcoholic Beverage Code, § 2-72; closing hours for dance halls licensed to serve alcoholic beverages, § 5-50; sale, possession, etc., of alcoholic beverages in teenage dance halls, § 5-56.

and continuously thereafter under a license or permit provided for in the Texas Alcoholic Beverage Code so long as such license or permit remains in full force and effect in the name of such dealer for the particular place of business so operated and is promptly renewed from year to year or is transferred strictly as authorized in subsection (c) of this section. Except for transfers made strictly as authorized in subsection (c) of this section, in the event such license or permit is permitted to lapse, or is transferred to a different person or is suspended or cancelled for any cause, or in the event such dealer ceases to operate such place of business, either temporarily or permanently, then such place of business shall cease to be excepted from the provisions of this section. The provisions of this subsection shall apply only to the extent that the premises remains at the same address at which it was situated on April 24, 1940.

(c) The application of the distance requirements of subsection (a) of this section to subsequent renewals of a license or permit or to the sale or transfer of premises or the business on the premises for which a new original license or permit is required shall be as provided in Section 109.59 of the Texas Alcoholic Beverage Code.

(d) In any prosecution under this section, the provisions of subsections (b), (c), and (f) of this section shall be regarded as defenses.

(e) Following receipt of a written request from the board of trustees of a school district for the designation of an alcohol-free school zone, the city council may designate areas within 1,000 feet of public schools as "alcohol-free school zones," as provided in Section 109.33 of the Texas Alcoholic Beverage Code and Section 38.007 of the Texas Education Code. Following receipt of a written request from the governing body of a private school for the designation of an alcohol-free school zone, the city council may designate areas within 1,000 feet of the private school as an alcohol-free school zone. Requests for designation shall be filed with the city secretary and shall be presented to city council as soon as practicable following their filing. Designations under this subsection may be made by city council motion.

(f) The provisions of subsection (a) shall not apply to the operation of a restaurant and/or bar that is associated with a hotel, subject to each of the following criteria:

- (1) The hotel must be situated within the "central business district," as defined in section 3-3 of this Code;
- (2) The hotel must have a total project cost per room of \$100,000.00, or more, and must continuously meet each of the following criteria:
 - a. Have 80 or more separately rentable guest sleeping accommodations;
 - b. Have breakfast, lunch, and dinner meal service available to the public on the premises during normal meal periods;
 - c. Have an average daily room rental rate of \$100.00 or more; and
 - d. Have 15 hours or more of on premises room service on a daily basis.
- (3) The restaurant and/or bar must be operated within the same structure that principally houses the guest sleeping accommodations of the hotel and must be an integral part of the hotel's operations; this requirement shall not be construed to preclude the operation of a restaurant by another person acting under a license or business agreement with the hotel's owner or operator, but a bar must be operated by the hotel's owner or, if the hotel is not operated by the owner, then by the person primarily responsible for the overall operation and management of the hotel; and
- (4) The restaurant or bar shall:
 - a. Take access from the lobby or interior corridors of the hotel; a restaurant may in addition to the lobby or interior access have direct public access to the exterior of the hotel structure but a bar may have no direct exterior access, except for "exit only" emergency egress doors if required for compliance with building and fire codes;

- b. Have no signage that is placed upon or visible from the exterior of the hotel that references or suggests the existence of a bar or advertises or suggests the availability of alcoholic beverages within a bar or restaurant;
- c. Not have any alcohol bottles, beer taps, alcohol service equipment, bars of the type typically associated with the service of alcohol by a bartender, alcohol related signage, or any other indicia of the sale or service of alcohol that may be viewed from the exterior of the hotel through windows, doorways, or other openings; however, this provision shall not preclude the service of alcohol in unmarked or covered containers or barware at patrons' tables in response to customer service orders; and
- d. Not have any outside seating or service areas; this requirement shall not be construed to preclude an interior courtyard restaurant or bar that is completely surrounded by the hotel and is not visible in any manner from the exterior of the hotel.

(g) The provisions of subsection (a) shall not apply to the operation of a restaurant as related to its proximity to a public school, subject to the following criteria:

- (1) The restaurant may have no signage that is placed upon or visible from the exterior that references or suggests the existence of or availability of alcohol on the premises; and
- (2) The restaurant may have no outside seating or service area in which alcohol is served; this requirement shall neither preclude an interior courtyard that is surrounded by walls and is not visible in any manner from the exterior nor preclude a sidewalk cafe under section 40-10.1 of this Code, provided that the sidewalk cafe area is not a part of the alcohol premises

for purposes of the State alcohol license or permit and that no alcohol is served or consumed in the sidewalk cafe area.

For purposes of the application of this subsection, the term "restaurant" shall be limited to a premises operating under a food and beverage certificate issued by the Texas Alcoholic Beverage Commission. Operation of a restaurant under the provisions of this subsection shall require written approval of the director of planning and development, which shall be granted upon demonstration of compliance with the foregoing requirements. Application for an approval shall be made by the applicant for the alcohol license or permit for the premises, who shall additionally be joined by the owner of the land upon which the restaurant will be situated if he is not the same person who will hold the alcohol licenses or permits. The approval shall be in the form of a covenant enforceable by the city that shall run with the land upon which the restaurant will be situated and shall be conditioned upon full and continuing compliance with all requirements of this subsection for the duration of the alcohol license or permit. The covenant shall be executed by the applicants and duly recorded in the real property records of the county at the expense of the applicants. The director of planning and development may issue rules that are consistent with the requirements of this subsection for the administration of its provisions. No certification that may be required from the city by the Texas Alcoholic Beverage Commission or any other authority for the issuance of any alcohol permit or license shall be provided until all requirements of this subsection have been completed.

The provisions of this subsection shall not affect any alcohol premises that otherwise qualifies for an alcohol license or permit under the other provisions of this section.

(h) The provisions of this subsection (h) shall only be applicable within mixed land use/entertainment zones established by city council. Any such zone shall be at least ten acres or ten city blocks in size and shall be characterized by the following:

- (1) High density mixed land use development, including uses such as residential,

commercial, retail, institutional, and entertainment with a predominance of multi-story and multi-tenant buildings.

- (2) Special public development interests, such as may be characterized by or associated with a tax increment reinvestment zone, improvement district, enterprise zone, historic district, transit corridor, or contractual street amenities development program.

Within a zone established under this subsection, a street level alcohol premises may be situated without regard to the other requirements and provisions of subsection (a), provided that not more than two other alcohol premises exists at street level in the same block face. In this subsection, a "block face" is the area on both sides of a city street block between two intersections. Alternatively, if three premises already exists at street level in the same block face, then additional premises may exist, but only if they are concealed; for this purpose and consistent with any applicable rules promulgated as provided below, concealment shall require that the additional premises be situated in the basement or on the second or a higher story of a building and have no signage or other indicia of the availability of alcohol that is visible from the street level.

The provisions of this subsection shall not affect any alcohol premises that otherwise qualifies for an alcohol license or permit under the other provisions of this section. The director of planning and development may issue rules that are consistent with the requirements of this subsection for the administration of this subsection. Without limitation, the rules shall address requirements for compliance with this subsection and the priority between alcohol license and permit applications in case two or more applications are received for street level locations in the same block face. The rules may require the applicant for the alcohol license or permit, joined by the owner of the land upon which it is situated, to execute and record in the real property records of the county a covenant that is enforceable by the city to ensure compliance with this section and the director's rules.

(Code 1968, § 4-2; Ord. No. 81-1237, § 1, 6-30-81; Ord. No. 83-1249, § 1, 8-16-83; Ord. No. 93-1326,

§ 1, 10-20-93; Ord. No. 96-368, §§ 1—3, 4-17-96; Ord. No. 01-832, § 1, 9-12-01; Ord. No. 03-1319, § 3, 12-23-03)

Sec. 3-3. Alcohol in central business district.

(a) In this section, the following words and terms shall have the meanings ascribed in this subsection:

Central business district means the area depicted as the central business district of the city on the map that was adopted by city council Resolution No. 93-109* and was approved by order of the Texas Alcoholic Beverage Commission dated January 25, 1994, true copies of which map, resolution and order are on file in the office of the city secretary.

*It should be noted that reference to Resolution No. 93-109 should reference Resolution No. 93-103.

Licensed premises means the premises of any place for which a Texas Alcoholic Beverage Commission permit or license has been issued that allows on-premises consumption of alcoholic beverages.

Open container means an alcoholic beverage container that is no longer sealed.

(b) It shall be unlawful for any person to be in possession of an open container in the central business district.

(c) It shall be unlawful for any person to engage in the public consumption of any alcoholic beverage in the central business district.

(d) It is a defense to prosecution under this section that the alleged offense took place in a motor vehicle, in a building not owned or controlled by the city, in a residential structure or on a licensed premises that is situated in the central business district.

(Ord. No. 94-597, § 2, 6-15-94)

Sec. 3-4. Location of dealer's premises near day-care center or child-care facility.

(a) In accordance with section 109.331 of the T.A.B.C., the city, through approval by city council following a recommendation from the director of

finance and administration or on its own motion, may create 300-foot alcohol-free zones surrounding day-care centers or child-care facilities. As used in this section, *applicant* means the owner of a day-care center or child-care facility.

An application for the creation of an alcohol-free zone within 300 feet of a day-care center or child-care facility may be submitted to the director of finance and administration by the owner of such day-care center or child-care facility. As soon as practicable following receipt of such an application, the director of finance and administration shall submit his recommendation for approval of the application for an alcohol-free zone to the city council. An application for the creation of an alcohol-free zone shall be recommended for approval by the director of finance and administration only if the day-care center or child-care facility is located in a residential area as defined in this subsection. Designations of alcohol-free zones pursuant to this section may be made by city council motion. An alcohol-free zone designation shall continue for as long as the child-care center or day-care facility remains under the same ownership and retains its license, certification or registration from the state.

As used in this section, *alcohol-free zone* means the area within 300 feet of a day-care center or child-care facility.

As used in this section, *residential area* means an area in which 75 percent or more of the tracts within a circular area, as described herein, are residential in character; the radius of such circular area shall be 1,500 feet, and the center of such circular area shall correspond to the midpoint of a line joining the two most distant points on the boundary of the tract on which the dealer's premises are located; multifamily tracts shall be counted as multiple residential tracts based upon the tax records acreage of the multifamily tract according to the following formula: each one-eighth acre of land or fraction thereof shall be equivalent to one residential tract; for purposes of this calculation a residential tract or multifamily tract shall be considered to be in the circular area in its entirety if any portion of it lies within the circular area.

(b) If an alcohol-free zone designation has been approved by city council, it shall be unlawful for any dealer in a residential area holding a permit or license under the following chapters of the T.A.B.C. to sell alcohol within 300 feet of a day-care center or child-care facility, as those terms are defined in section 42.002 of the Human Resources Code: Chapter 25 (Wine and Beer Retailer's Permit), Chapter 28 (Mixed Beverage Permit), Chapter 32 (Private Club Registration Permit), Chapter 69 (Retail Dealer's On-Premise License) or Chapter 74 (Brewpub License). The measurement to a dealer's premises shall be in a direct line from the property line of the day-care center or child-care facility to the property line of the place of business where alcoholic beverages are sold and in a direct line across intersections, in accordance with sections 109.33 and 109.331 of the T.A.B.C.

(c) This section does not apply to a permit or license holder who sells alcoholic beverages if:

- (1) The holder of a permit or license issued under the chapters of the T.A.B.C. listed in subsection (b) holds a food and beverage certificate issued by the Texas Alcoholic Beverage Commission;
- (2) The permit or license holder and the day-care center or child-care facility are located on different stories of a multistory building;
- (3) The permit or license holder and the day-care center or child-care facility are located in separate buildings and either the permit or license holder or the day-care center or child-care facility is located on the second story or higher of a multistory building;
- (4) The place of business where alcoholic beverages are sold and the day-care center or child-care facility are located on the same tract or contiguous tracts of land which are under the direct ownership of the same person or entity; or
- (5) The sale of alcoholic beverages at a location was authorized by the Texas Alcoholic Beverage Commission before the day-care center or child-care facility use was

established within 300 feet from the place of business, and a new application for the same location is filed with the Texas Alcoholic Beverage Commission not later than one year after the date the previous permit or license authorizing the sale of alcoholic beverages at the location either expired or was terminated.

(d) The application shall contain a statement under oath that:

- (1) The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct;
- (2) The applicant has, for a minimum of thirty days, placed signs (at least 24 inches by 36 inches in size) that provide notification and information specifically stating "300-FOOT ALCOHOL-FREE ZONE PENDING," identifying the address of the day-care center or child-care facility, and containing the notation: "For further information, contact the Director of the Department of Finance and Administration of the City of Houston." All lettering on the signs must be at least one and one-half inches by two inches in size for each letter on the sign. It shall be the duty of each applicant as to each particular application to erect at least one such sign along each of the property's public road or highway frontages so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, then signs shall be placed upon the property at a point visible from the nearest public right-of-way. Said signs shall be checked daily by the applicant and reposted as required to ensure that they remain posted until the application has been approved or denied; and
- (3) The applicant has mailed the same information appearing on the sign to each property owner, as shown on the most recently approved tax rolls of the City of Houston, within 300 feet of the day-care center or child-care facility.

(e) The director of finance and administration may require the sign to be both in English and in a language other than English if it is likely that a substantial number of the residents and property owners in the vicinity of the day-care center or child-care center speak a language other than English as their familiar language.

(f) In the event that the creation of an alcohol-free zone is initiated by action of city council, the director of finance and administration shall mail notice of such action to each owner, as shown on the most recently approved tax rolls of the city, of property within 300 feet of the day-care center or child-care facility.

(g) Notwithstanding anything to the contrary in this section, an alcohol-free zone shall not be created if the day-care center or child-care facility is located within a high density mixed land use development, including uses such as residential, commercial, retail, institutional, and entertainment with a predominance of multi-story and multi-tenant buildings.

(Ord. No. 05-63, § 1, 1-19-05)

Secs. 3-5—3-15. Reserved.

ARTICLE II. CITY FEES

Sec. 3-16. City license fee.

There is hereby levied a city fee in an amount equal to one-half the corresponding state license fee for each license issued for premises located within the city.

(Code 1968, § 4-10; Ord. No. 81-1237, § 1, 6-30-81)

Sec. 3-17. City permit fee.

There is hereby levied a city fee in an amount equal to one-half of the corresponding state permit fee for each permit issued for premises located within the city.

(Code 1968, § 4-11; Ord. No. 81-1237, § 1, 6-30-81)

Sec. 3-18. Fees payable to tax assessor and collector.

The fees levied pursuant to this article shall be payable to the tax assessor and collector of the city. Each license and permit shall be presented to the tax assessor and collector by the permittee or licensee thereof for examination. The tax assessor and collector shall examine the same, determine the amount of the applicable city fee, and return the permit or license.

(Code 1968, § 4-12; Ord. No. 81-1237, § 1, 6-30-81)

Sec. 3-19. Issuance of receipt.

Upon payment of the applicable city fee, the tax assessor and collector shall issue a city fee receipt to the licensee or permittee setting forth, without limitation, the name of the licensee or permittee, the address of the premises, a description of the permit or license, the permit or license number, the date issued, and the amount paid.

(Code 1968, § 4-13; Ord. No. 81-1237, § 1, 6-30-81)

Sec. 3-20. Fee receipt to be posted.

All city fee receipts issued under this article shall be displayed adjacent to the permit or license to which they appertain. Failure of any permittee or licensee to display his city fee receipt in accordance with the provisions of this section shall be unlawful.

(Code 1968, § 4-14; Ord. No. 81-1237, § 1, 6-30-81)

Sec. 3-21. Fee payable prior to sale.

Any permittee or licensee who sells an alcoholic beverage without first having paid a fee levied pursuant to this article commits a misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00.

(Code 1968, § 4-15; Ord. No. 81-1237, § 1, 6-30-81)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 3-22. Refunds.

(a) No permittee or licensee may obtain a refund of any city fee paid pursuant to this article, except as follows:

- (1) The permittee or licensee is prohibited from continuing in business at the premises to which the fee appertains because of a local option election, provided that in such event the refund shall be limited to the proportionate amount of the city fee covering the unexpired term of the permit or license; or
- (2) The Texas Alcoholic Beverage Commission decides to allow the permittee or licensee to withdraw its application and refunds the Texas Alcoholic Beverage Commission permit or license payment; or
- (3) The permit or license was issued through error on the part of city personnel. For purposes of this item, an error on the part of both city personnel and the permittee or licensee, such as the request for and issuance of a duplicate permit or license is excluded. Only errors that are exclusive to city personnel are included.

Except as provided in item (1) above, no refund shall ever be allowable where a Texas Alcohol Beverage Commission licensed or permitted premises has been operated for any length of time under authority of the fee receipt.

(b) In order to receive a refund, the fee receipt must be surrendered to the tax assessor and collector. If any business was conducted under the

permit or license, the refund shall be prorated on the basis of the date of surrender of the fee receipt.

(c) Except in the circumstance described in item (3) of subsection (a), there shall be imposed a refund processing fee of \$25.00. If the amount of the refund to be given is less than \$25.00, then no refund shall be made.

(d) In the circumstance described in item (3) of subsection (a), the fee shall be refunded in full.
(Code 1968, § 4-16; Ord. No. 81-1237, § 1, 6-30-81;
Ord. No. 94-61, § 1, 1-19-94)